

STATE OF MICHIGAN
COURT OF APPEALS

ASSET ACCEPTANCE, L.L.C.,
Plaintiff-Appellant,

v

FLORA L. MORGAN,
Defendant-Appellee.

UNPUBLISHED
March 29, 2007

No. 264494
Wayne Circuit Court
LC No. 04-415929-AE

Before: Owens, P.J., and Neff and White, JJ.

WHITE, J. (*concurring*).

I agree that the circuit court erred in concluding that the district court was obliged to grant defendant's motion for summary disposition before trial. MCR 2.116(I)(3) recognizes that there may be questions of fact pertinent to the disposition of a motion for summary disposition brought under MCR 2.116(C)(7), as in this case, and allows the court to conduct a trial on such questions. Here, as the circuit court recognized, plaintiff established a genuine issue of material fact whether payments were made after the claim initially accrued. The circuit court concluded, however, that because plaintiff failed to produce evidence at the motion stage that defendant made or consented to the payment, summary disposition should have been granted. Defendant asserted in an affidavit that she had not made any payments after the debt was accelerated. Defendant's affidavit did not, however, address whether she consented to or ratified the payment; it simply stated that she did not make the payment. Because plaintiff presented evidence that a payment had been made during the relevant period, the court properly denied the motion for summary disposition based on the statute of limitations. Further, once the case proceeded to trial, the district court was free to determine the facts based on the evidence and legitimate inferences, and as the circuit court recognized, those findings were not clearly erroneous.

/s/ Helene N. White